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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|--------------------------|---------------------|------------------|
| 10/058,545 | 01/28/2002 | Nicholas Robert Constant | 6549/53673 | 3732 |
| 30505 | 7590 | 08/12/2004 | EXAMINER | |
| MARK J. SPOLYAR 38 FOUNTAIN ST. SAN FRANCISCO, CA 94114 | | | VU, VIET DUY | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2154 | |

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,545

Applicant(s)

CONSTANT ET AL.

Examiner

Viet Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-33 is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16-22 is/are rejected.
- 7) ☒ Claim(s) 14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2.4.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Art Rejections:

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-13 and 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liles et al U.S. pat. No. 5,880,731 in view of a patent abstract publication KR2002003533A, Byun et al, hereafter Byun.

Per claims 1-6 and 18, Liles discloses a system and method for enabling graphically expressive messaging service comprising:

a) a storage for storing a plurality of characters, each character having a set of images corresponding to a plurality of moods (see figure 3 and col 6, lines 35-49),

b) a messaging/chatting server operative to present a user interface facilitating composition of a graphically expressive message including:

i) allowing user to select a character and a mood for the message (col 6, lines 50-67), and

ii) allowing user to input text and identify a recipient (col 10, lines 2-4),

iii) means for transmitting the graphically expressive message to the recipient (see col 5, lines 40-42).

Liles does not teach providing graphically expressive messaging service to mobile user. Byun teaches providing such messaging service to mobile user (see Byun's abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Liles to provide messaging services to any type of users including mobile users because it would have further increased the utility of Liles's messaging service.

Per claims 7-9, Liles does not explicitly teach maintaining user's account/profile in the server. An official notice is taken that user's account/profile is usually maintained in such

messaging service in order to properly provide services to the users.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to maintaining user's account/profile in Liles' message server because it would have enabled providing messaging services to the users.

Per claims 10-11, Liles teaches storing avatar component as retrievable data file (see col 7, lines 43-45). It would have been obvious to one skilled in the art to utilize any conventional file system to identify and retrieve the avatar files.

Per claims 12-13, Liles teaches providing user interface for displaying avatars associated with chat participants (see col 13, lines 50-57).

Per claims 16-17, Liles teaches allowing user to modify predefined avatars and uploading the modified avatars to the server for subsequent use (see col 9, lines 2-9).

Claims 19-22 are similar in scope as that of claims 1-13 and 16-18.

Allowable Subject Matter:

4. Claims 14-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in

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independent form including all of the limitations of the base claim and any intervening claims.

5. Claim 23-33 is allowed over prior art of record.

Conclusion:

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viet Vu whose telephone number is 703-305-9597. The examiner can normally be reached on Monday through Thursday from 8:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee, can be reached on (703) 305-8498.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-305-9600. The Group fax number is 703-872-9306.



VIET D. VU
PRIMARY EXAMINER

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8/9/04